

STATE OF SOUTH CAROLINA

Petition of South Carolina Electric & Gas Company for
an accounting order authorizing the deferment and
amortization of expenditures made in connection with its
gas promotion program

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

COVER SHEET

DOCKET

NUMBER: 2008 - 155 - G

(Please type or print)

Submitted by: K. Chad Burgess

SC Bar Number: 69456

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DOCKETING INFORMATION (Check all that apply)

☐ **Emergency Relief demanded in petition** ☐ **Request for item to be placed on Commission's Agenda expeditiously**

☐ **Other:** _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input checked="" type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input checked="" type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		



May 29, 2008

K. Chad Burgess
Senior Counsel

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VIA ELECTRONIC FILING

The Honorable Charles Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RE: Petition of South Carolina Electric & Gas Company for an accounting order authorizing the deferment and amortization of expenditures made in connection with its gas promotion program
Docket No. 2008-155-G

Dear Mr. Terreni:

Enclosed for filing on behalf of South Carolina Electric & Gas Company is an Objection to the Petition to Intervene in the above-referenced docket.

By copy of this letter, we are also serving counsel for the South Carolina Office of Regulatory Staff as well as the Electric Cooperatives of South Carolina, Inc. with a copy of the enclosed document and attach a certificate of service to that effect.

If you have any questions, please advise.

Very truly yours,

K. Chad Burgess

KCB/kms
Enclosures

cc: Shannon Bowyer Hudson, Esquire
Christopher R. Koon, Esquire
Frank R. Ellerbe, III, Esquire
Bonnie D. Shealy, Esquire
(all w/enclosures)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-155-G

IN RE:)
)
Petition of South Carolina Electric & Gas)
Company for an accounting order)
authorizing the deferment and amortization)
of expenditures made in connection with its)
gas promotion program.)
_____)

**OBJECTION OF SOUTH CAROLINA
ELECTRIC & GAS COMPANY
TO THE PETITION TO INTERVENE**

South Carolina Electric & Gas Company (SCE&G or Company) hereby files with the Public Service Commission of South Carolina (Commission) this objection to the Petition to Intervene of the Electric Cooperatives of South Carolina, Inc., filed on or about May 19, 2008 (Petition to Intervene), in the above-captioned matter.

ARGUMENT

The grant or denial of a petition to intervene is within the sound discretion of the adjudicative body. However, such discretion is bounded by guiding principles and factors. The Commission regulations require that a petition for intervention include facts from which the petitioner's right or interest can be determined, the grounds of the proposed intervention, and the position of the petitioner in the docket. 26 S.C. Code Ann. Reg. 103-825(A)(3). Further, the South Carolina Rules of Civil Procedure and the Rules of Procedure of the Administrative Law Court provide that intervention is proper if intervention will not unduly prolong the proceeding or otherwise prejudice the rights of existing parties. *See* Rule 24, SCRCF; Rule 20, RPALC. These requirements are similar to the analysis employed by the Commission in prior

proceedings. In light of these considerations, no basis or grounds exist in support of the petition.

For the reasons more fully set forth herein, the Petition to Intervene should be denied.

I. THE ELECTRIC COOPERATIVES OF SOUTH CAROLINA, INC., LACKS STANDING TO INTERVENE IN THIS MATTER.

As a threshold matter, the Electric Cooperatives of South Carolina, Inc. (ECSC), lacks standing to participate in this proceeding. *See Ex Parte Gov't Employee's Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007) (party must have standing to intervene). A party seeking to establish standing must prove the "irreducible constitutional minimum of standing," which consists of three elements: (1) the petitioner must have suffered an injury in fact; (2) the injury and the conduct complained of must be causally connected; and (3) it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision. *Sea Pines Ass'n for the Prot. of Wildlife v. South Carolina Dep't of Natural Res. & Cmty. Servs. Assocs., Inc.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001). In this matter, ECSC can neither establish an injury in fact nor can it show that a decision will redress its grievance.

An "injury in fact" has been defined as "an invasion of a legally protected interest" which is "concrete and particularized" and "actual or imminent," not "conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). In order for the injury to be particularized, it must affect the petitioner in a personal and individual way. *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291. The injury must be of a personal nature to the party bringing the action, not merely of a general nature that is common to all members of the public. *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 34, 530 S.E.2d 369, 371 (2000).

ECSC has suffered no injury as a result of the Commission's decision to increase the amount of SCE&G's natural gas water heater rebate incentive for developers of new multi-family apartment projects. The subject matter of this docket is the regulatory accounting

treatment of an existing, Commission-approved gas rebate program. The Commission's decision in this docket only authorizes the accounting treatment of the rebate.¹ The actual treatment of the deferred account is not addressed in this docket and would be the subject of another, subsequent proceeding. Indeed, the offering of the rebate itself, which ECSC regards as the real threat, *see* Pet. Intervene ¶4 (arguing that rebate is to encourage the installation of natural gas water heaters rather than electric water heaters), has already been approved by the Commission. *Order Approving Gas Rates and Charges*, Order No. 89-1074 at 16-20, *In Re: Application of SCE&G for Adjustments in the Company's Gas Rate Schedules and Tariffs*, Docket No. 89-245-G, (Nov. 30, 1989). Specifically, the Commission found that the gas promotion program "achieved positive goals" and "should be beneficial to the Company's overall body of customers." Order No. 89-1074 at 19. SCE&G's petition merely requests an accounting order to allow treatment of the increase of the rebate for the existing gas rebate program. With that simple clarification, the foundation of ECSC's intervention argument fails.

Contrary to its desire to preclude any reliable energy alternative to electricity, such as natural gas, in its service territories, ECSC and its members have no legally protected interest to be free from competition that can be subject to injury. Thus, ECSC and its members cannot suffer any "personal" or "individualized" injury from the Commission's decision to issue an accounting order in connection with a gas rebate program that the Commission approved in Order No. 89-1074. *Cf. Ex Parte Gov't Employee's Ins. Co.*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007) (holding that the financial implications of a court's decision was not enough to confer standing on a proposed intervenor nor render the proposed intervenor a "real party in interest")

¹ With regards to ECSC's request for a justification of the rebate, ECSC is directed to SCE&G's petition in this matter, which details the explanation for the rebate program. *See* SCE&G Pet. ¶¶3-8.

because the connection was too attenuated and was not actual, real, or substantial); Pet. Intervene ¶6 (ECSC couching its concern that the accounting treatment is a “preliminary step”).

The South Carolina Supreme Court has directly addressed this issue and held that in similar circumstances no standing exists. In *Duke Power Company v. South Carolina Public Service Commission*, 284 S.C. 81, 326 S.E.2d 395 (1985), the Supreme Court held that ratepayers who merely alleged that future rates may be impacted by present actions was insufficient to confer standing. Duke Power purchased a county utility on the condition that it would never increase the rates of the county utility’s customers. Other Duke customers challenged the transaction, claiming that they would receive a rate reduction if the lower county-specific rate was eliminated. *Id.*, 284 S.C. at 98, 326 S.E.2d at 405. The Supreme Court stated that those claims “assumed, without proof,” what action the Commission would allow in a future rate proceeding. The Supreme Court stated that “such an interest is too contingent, hypothetical, and improbable to support standing to attack the ... practices of the Public Service Commission.” *Id.*

In the instant case, ECSC has done no better than the ratepayers in *Duke Power*. The Commission has not rendered a decision on how the expenses in the deferred account will be treated for ratemaking purposes. That is the subject of a future proceeding, as was the case in *Duke Power*. South Carolina law is clear – ECSC cannot claim any particularized harm or injury sufficient to confer standing under South Carolina law. *See Commander Health Care Facilities, Inc. v. S.C. Dep’t of Health and Envtl. Control*, 370 S.C. 296, 634 S.E.2d 664 (Ct. App. 2006) (holding that a competitor lacked standing to challenge an administrative agency determination because it suffered no injury).

Additionally ECSC cannot demonstrate that a remedy is available to it from the Commission in this docket. As discussed below, the true crux of ECSC's petition is that ECSC's members are fearful of competition from natural gas and therefore, do not wish to allow the South Carolina citizens who reside in the electric cooperatives' respective service territories to have access to natural gas service. However, the Commission lacks jurisdiction to alleviate ECSC's members' fear of competition in general. Nonetheless, ECSC seeks to manipulate the regulatory process and this docket to have the Commission take measures to eliminate its competitor – natural gas.²

II. THE CLAIM OF THE ELECTRIC COOPERATIVES OF SOUTH CAROLINA, INC., IS UNRIPE.

The issues purported to be addressed by ECSC are neither relevant to this proceeding nor ripe for the Commission's consideration. "A threshold inquiry for any court is a determination of justiciability, *i.e.*, whether the litigation presents an active case or controversy." *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996).

SCE&G's petition is directed solely at obtaining approval for placing certain expenses in a deferred account. The basis for the petition is S.C. Code Ann. § 58-5-220 which provides that "[t]he Office of Regulatory Staff may, in its discretion, subject to approval of the commission ... establish a standardized system of accounts to be kept by the public utilities subject to its

² In fact, ECSC's proposed intervention in this matter can be taken as evidence of the success of the rebate program in acquiring customers, which, as explained in SCE&G's Petition, benefits all of SCE&G's customers by distributing the fixed costs over a larger customer base. SCE&G Pet. ¶7.

jurisdiction ... and ... prescribe the manner in which such accounts shall be kept.” Therefore, in order to ensure that it is handling these expenditures appropriately, SCE&G has requested, and the Commission has approved, the ability to record these expenditures in a deferred account. Only in the context of a cost recovery proceeding addressing SCE&G’s rates will the propriety of these expenses be at issue before the Commission. ECSC has failed to state in its Petition to Intervene what right or interest it has with respect to this accounting procedure, or what its position would be with respect to the accounting procedure sought by SCE&G. Rather, ECSC attempts to address the ultimate question of whether these rebates are appropriate or warranted. This issue is not raised by SCE&G’s Petition, is not before the Commission for its consideration and, as such, ECSC’s argument is not pertinent to this proceeding.

III. THE ELECTRIC COOPERATIVES OF SOUTH CAROLINA, INC., UNTIMELY FILED ITS PETITION AND INTERVENTION IS UNAVAILABLE.

The Petition to Intervene should also be denied in that ECSC failed to timely file such petition with the Commission. SCE&G filed its petition with the Commission on April 18, 2008. On the same day, the Commission posted SCE&G’s petition in Docket No. 2008-155-G on its Docket Management System (DMS), which is available to and accessible by the public. On April 25, 2008, the Commission Staff notified various interested persons via electronic mail, including counsel for ECSC, of the Commission Agenda and Advised Items, which included notification of SCE&G’s Petition. *See* Docketing Department Agenda - Utility Matters for the week of April 28, 2008, at 4. Simultaneously, the Agenda and Advised Items were published on DMS. On May 8, 2008, the Commission Staff e-mailed those same interested persons, including counsel for ECSC, notifying them of the Commission Agenda for the week of May 12, 2008. Therein, the Agenda specifically indicated that the issues raised by the Petition would be

discussed by the Commission. *See* Docketing Department Agenda - Utility Matters for the week of May 12, 2008, at 4.

ECSC's Petition to Intervene implies that, because no Notice of Filing was issued, it was not notified of this proceeding. However, the Commission can, and routinely does, render a decision in accounting matters without requiring a hearing, and therefore without a notice of filing or notice of hearing, since no change in rates is being requested. *See, e.g., Accounting Order Regarding Certain Seismic Evaluation Costs*, Order No. 2007-264, *In Re: Petition of SCE&G*, Docket No. 2007-104-E (Pub. Serv. Comm'n of S.C., April 20, 2007); *Order Approving Accounting Treatment*, Order No. 2002-74, *In Re: Request of SCE&G*, Docket No. 2002-34-E (Pub. Serv. Comm'n of S.C., Jan. 31, 2002).

Nevertheless, it is clear that ECSC received notice of SCE&G's petition and no justification exists for the Commission to revisit its decision. *See generally Order Denying Petition for Rehearing and Reconsideration*, Order No. 91-207, *In Re: Application of Acme Delivery Services, Inc.*, Docket No. 89-174-T (Pub. Serv. Comm'n of S.C., March 27, 1991) (where an interested party had actual notice and where Commission's decision is fully supported in law, logic, and fact, the provisions of said order should not be modified or vacated). Despite these various notices and publicly available postings, ECSC failed to file its Petition to Intervene until after the Commission had rendered a decision in this matter and failed to include any explanation or justification for why such an untimely filing should be considered by the Commission at this late date. Because ECSC was duly notified of the pending proceeding, it was incumbent upon itself to timely act to protect any interest it may have, and its failure to exercise reasonable care dictates that the Petition to Intervene should be denied.

The Commission has previously recognized that intervention in similar circumstances is inappropriate and should not be allowed. In a situation where an entity knows of the pending application and sought to intervene “just prior to the hearing on the merits,” the Commission denied intervention because no “good reason” was given for the lapse in time and the lateness of the petition would prejudice the other parties. *Order Denying Motion to Allow Intervention Out of Time*, Order No. 91-273, *In Re: Application of GTE South, Inc.*, Docket No. 90-698-C (Pub. Serv. Comm’n of S.C., April 1, 1991); *see also* Rule 24(b), SCRCF (application to intervene must be timely and the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties); Rule 20, RPALC (same). ECSC has failed to provide any reason or basis for its inability or unwillingness to timely intervene in this matter despite repeated notice. To allow their participation in a proceeding which has largely concluded would result in undue prejudice to SCE&G and to its customers who are to benefit from the proposed rebate program. ECSC’s failure to timely file, and failure to offer any explanation for filing at this late juncture, in and of itself justifies denial of the Petition to Intervene.

Moreover, ECSC’s claim that SCE&G will suffer no prejudice is disingenuous. As even ECSC has recognized, the Commission has voted to grant the relief that SCE&G requested. In other words, SCE&G has prevailed. ECSC seeks to reverse that decision. Clearly, SCE&G would be prejudiced by ECSC’s untimely participation in this case since the decision has been made in SCE&G’s favor. Under the rules of intervention, this prejudice weighs in favor of denial of the Petition to Intervene. *Cf. Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661, 664 (1993) (motion to intervene when the matter has been resolved is moot).

IV. PUBLIC POLICY WEIGHS AGAINST INTERVENTION, SINCE THE ELECTRIC COOPERATIVES OF SOUTH CAROLINA, INC., IS CONCERNED ONLY WITH ANTICOMPETITIVE PRACTICES AND LIMITING CUSTOMER CHOICE.

The Commission should recognize ECSC's proposed intervention in this matter for what it is – a bold attempt to manipulate the administrative process for an anticompetitive purpose. While camouflaged in the form of an objection to the Commission's decision to grant SCE&G's request for regulatory accounting treatment of its gas water heater rebate, the goal of ECSC's members is to prevent natural gas from competing with the all-electric mission of the electric cooperatives. ECSC and its members seek to limit the citizens of South Carolina to only one energy source. The electric cooperatives are unregulated by the Commission, *but see* S.C. Code Ann. Regs. 103-312(2)(A) (requiring electric systems to file rates and schedules with the Commission); S.C. Code Ann. Regs. 103-302(9) (defining "electric systems" to include electric cooperatives), and have no oversight, yet they seek to use this Commission's oversight of SCE&G as a sword to strike at natural gas service.

As the motives of ECSC are wholly unrelated to any jurisdiction or authority of the Commission, the request for intervention must be denied. The relief requested by SCE&G in its petition does not involve a change to any of SCE&G's current rates or prices or require any change in any Commission rule, regulation or policy. It is a procedural matter for regulatory accounting purposes. The public interest is not served by ECSC's participation in this matter, nor can ECSC be said to represent the public interest. ECSC represents the commercial and economic interests of its member electric cooperatives, not the citizens of the State of South Carolina or SCE&G's customers. ECSC's interests are in noncompetition and limiting customer choices – which are contrary to the public interest. This Commission and the Office of Regulatory Staff have already determined that SCE&G's petition satisfies the public interest. As

a matter of public policy, this Commission should not allow itself to be used as a tool to harm the citizens of this State through anticompetitive practices advanced by ECSC.

CONCLUSION

For the reasons set forth above, SCE&G respectfully requests that the Commission deny ECSC's Petition to Intervene.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K. Chad Burgess", is written over a horizontal line.

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Attorneys for Petitioner
South Carolina Electric & Gas Company

Columbia, South Carolina
May 29, 2008

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IN RE:

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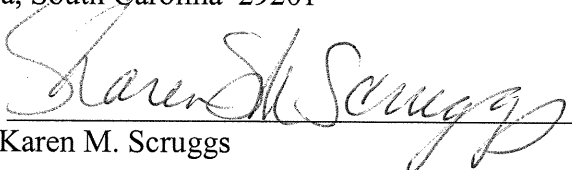
**CERTIFICATE
OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of the
Objection of South Carolina Electric & Gas Company to the Petition to Intervene
via U.S. Mail to the persons named below at the address set forth:

Shannon Bowyer Hudson, Esquire
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, South Carolina 29201

Mr. Christopher R. Koon
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Bonnie D. Shealy, Esquire
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Columbia, South Carolina 29201



Karen M. Scruggs

Columbia, South Carolina
This 29th day of May 2008